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1 — Court Gives Obama a Climate Change Win, The New York Times, 6/9/2015

<http://www.nytimes.com/2015/06/10/us/coal-epa-clean-power-plan.html?ref=us&r=0>

A federal court on Tuesday dismissed a lawsuit by the nation's largest coal companies and 14 coal-producing states that sought to block one of President Obama's signature climate change policies.

2 – Coalition seeking a say in suit over haze-abating plan, Arkansas Democrat Gazette, 6/10/2015

<http://www.arkansasonline.com/news/2015/jun/10/coalition-seeking-a-say-in-suit-over-ha/?f=news-arkansas>

A coalition of companies that depend on coal-fired power plants in Arkansas -- including Entergy Arkansas and the Arkansas Electric Cooperative Corp. -- has filed a motion to intervene in an already settled federal lawsuit over a new plan for reducing haze in Arkansas and Missouri national wildlife areas.

3 – Oklahoma Corporation Commission judge says no to replacing OG&E's Mustang plant in \$1.1 billion compliance case, The Oklahoman, 6/8/2015

<http://newsok.com/oklahoma-corporation-commission-judge-says-no-to-replacing-oges-mustang-plant-in-1.1-billion-compliance-case/article/5426126>

Oklahoma Gas and Electric Co. should be able to recover some costs related to environmental compliance, but should not get pre-approval to spend \$400 million to replace its aging Mustang generating plant, an administrative law judge recommended Monday.

4 — 3 pumps down as wastewater plant fights floodwater, Shreveport Times, 6/10/2015

<http://www.shreveporttimes.com/story/news/2015/06/09/shreveport-wastewater-plants-over-capacity/28753365/>

Flooding has inundated Shreveport's sewer system, causing the North Regional Wastewater Treatment Plant, just off Russell Road, to work overtime. The plant normally takes in 3 million gallons of wastewater per day but now is taking in at least an estimated 60 million gallons of flow a day.

5 — Railroad Commission picks Porter as new leader, Fort Worth Star-Telegram, 6/9/2015

<http://www.star-telegram.com/news/business/barnett-shale/article23611078.html>

Texas Railroad Commissioner David Porter was unanimously selected Tuesday to be the new chairman of the state's oil and gas regulatory agency. Porter, a CPA who practiced in Midland, providing services to oil and gas producers, royalty owners and oil field service companies, takes over the post from outgoing Chairwoman Christi Craddick.

6 – Good news about fracking prompts hysteria from environmentalists (editorial), The Oklahoman, 6/10/2015

<http://newsok.com/good-news-about-fracking-prompts-hysteria-from-environmentalists/article/5426414>

IT'S telling that the extremism of the environmental movement has reached the point that some of its members now insist the Obama administration is engaged in a grand conspiracy with Big Oil.

7 – The Practical Bottom Line: The Final Waters of the US Rule, National Law Review, 6/9/2015

<http://www.natlawreview.com/article/practical-bottom-line-final-waters-us-rule>

Two weeks ago, we started our series of posts examining the Obama Administration's final rule redefining the waters subject to federal jurisdiction under the Clean Water Act by looking at the bottom line, legally, of the waters now considered to be always jurisdictional.

8 – Drilling rig may come to St. Tammany Parish in 45 days, New Orleans Times-Picayune, 6/9/2015

http://www.nola.com/environment/index.ssf/2015/06/drilling_rig_may_come_to_st_ta.html#incart_most_shared-environment

With its final regulatory hurdle behind it, Helis Oil & Gas Co. plans to waste no time starting work on its drilling and fracking project in St. Tammany Parish. A drilling rig may be erected in about 45 days on the site northeast of Mandeville, a company spokesman said Tuesday (June 9).

9 — Feds blame 2014 Houston Ship Channel collision, spill on tugboat, Houston Chronicle, 6/10/2015

<http://fuelfix.com/blog/2015/06/10/feds-blame-2014-houston-ship-channel-collision-spill-on-tugboat/#20201101=0>

A tugboat captain's decision to try to beat a cargo ship into the Houston Ship Channel is the probable cause of a 2014 collision that spilled 168,000 gallons of oil that drifted up to 200 miles down the Texas Gulf coast, according to a federal report issued Tuesday.

10 — House Republicans Would Cut EPA Spending 9 Percent, AP, 6/9/2015

http://hosted.ap.org/dynamic/stories/U/US_CONGRESS_ENVIRONMENTAL_SPENDING?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT&CTIME=2015-06-09-12-43-34

House Republicans proposed a spending bill Tuesday that cuts the budget at the Environmental Protection Agency by 9 percent and tries to prevent the Obama administration from enacting several regulations.



The New York Times | <http://nyti.ms/1KTqIQB>

U.S.

Court Gives Obama a Climate Change Win

By CORAL DAVENPORT JUNE 9, 2015

WASHINGTON — A federal court on Tuesday dismissed a lawsuit by the nation's largest coal companies and 14 coal-producing states that sought to block one of President Obama's signature climate change policies.

The lawsuit, *Murray Energy v. E.P.A.*, challenged the Environmental Protection Agency's proposed rule to reduce planet-warming greenhouse gas emissions from power plants. If enacted, the rule could shutter hundreds of such plants, freeze construction of future plants and slow demand for coal production in the United States.

The lawsuit was the first in a wave of expected legal challenges to the E.P.A. climate change rules. Legal experts say they expect some of those challenges to make it to the Supreme Court.

Among the lawyers arguing on behalf of the coal companies was Laurence H. Tribe, a renowned Harvard scholar of constitutional law and Mr. Obama's former law school mentor.

The E.P.A. put forth the power plants proposal last June, and after taking public comments and revising the plan, the agency is scheduled to reveal it in final form in August. The judges in the United States Court of Appeals for the District of Columbia Circuit rejected the challenge, saying it was unprecedented for a court to review a rule that had been introduced only in the form of a draft.

All three circuit court judges agreed that the challenge was premature.

“Petitioners are champing at the bit to challenge E.P.A.’s anticipated rule restricting carbon dioxide emissions from existing power plants,” Judge Brett Kavanaugh wrote in the opinion. “But E.P.A. has not yet issued a final rule. It has issued only a proposed rule. Petitioners nonetheless ask the court to jump into the fray now. They want us to do something that they candidly acknowledge we have never done before: review the legality of a proposed rule.”

He concluded, “We deny the petitions for review and the petition for a writ of prohibition because the complained-of agency action is not final.”

Liz Purchia, a spokeswoman for the agency, wrote in a statement, “E.P.A. is pleased that the court has denied the challenges to our proposed Clean Power Plan and confirmed our assessment that they are premature.”

Environmentalists also cheered the decision. “The first legal challenge to the Clean Power Plan failed today, and others the polluters will trot out should fail as well,” said David Doniger, the head of the climate and clean air program for the Natural Resources Defense Council, an advocacy group.

But litigants are already preparing to file a new suit once the rule is put into effect.

“We are obviously disappointed with the court’s ruling today, but we still think we have a compelling case that the rule is unlawful,” said Patrick Morrissey, the attorney general of West Virginia, who led oral arguments against the rule. “As the court recognized, the rule will be final very soon, and we look forward to continuing to press the issue. We will continue to take every available step to protect our citizens and the State of West Virginia from this unlawful power grab by Washington bureaucrats.”

Legal experts on both sides of the issue say the final regulation is expected to stand as a novel and even audacious legal interpretation of the 1970 Clean Air Act. Under standard Clean Air Act regulations, the E.P.A. assigns emissions limits to polluting entities such as power plants and dictates how companies will meet the limits — for example, by installing pollution-reduction equipment, like chemical scrubbers, in power plant smokestacks.

The agency has taken a unique approach with the climate change rule, however. It is expected to assign each state a different target number for reducing its levels of greenhouse gas emissions, though states will be able to create their own plans for doing so. Those plans may range far outside the power plant fence with states complying, for example, by increasing their production of renewable energy from wind and solar, by installing energy-efficiency technology, or even by enacting a carbon tax.

The E.P.A. contends that the broad approach will give states the flexibility to customize an emissions reduction plan that best suits their energy profile. But that broad interpretation of the Clean Air Act could also create legal vulnerabilities in the plan.

“Although the administration dodged a bullet, it can’t really claim the case as a big victory,” wrote Jeffrey R. Holmstead, a top E.P.A. official in the George W. Bush administration who now lobbies for electric utilities with the firm Bracewell & Giuliani. “The court did not say anything about the legal merits of the Clean Power Plan. All those issues are simply put off to another day.”

A version of this article appears in print on June 10, 2015, on page A18 of the New York edition with the headline: Court Gives Obama a Climate Change Win .

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Coalition seeking a say in suit over haze-abating plan

By [Emily Walkenhorst](#) [twitter](#)

This article was published today at 3:20 a.m. Updated June 9, 2015 at 3:20 a.m.

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A coalition of companies that depend on coal-fired power plants in Arkansas -- including Entergy Arkansas and the Arkansas Electric Cooperative Corp. -- has filed a motion to intervene in an already settled federal lawsuit over a new plan for reducing haze in Arkansas and Missouri national wildlife areas.

The lawsuit, settled late last year, led the Environmental Protection Agency to issue a plan to reduce power plant emissions that could cost utilities more than \$1 billion.

The haze plan was required in an amendment to the Clean Air Act passed by Congress in 1999. The law calls for the reduction of sulfur dioxide and nitrogen oxide in the atmosphere at Caney Creek and along the Upper Buffalo River in Arkansas and in two Missouri parks, the Hercules-Glades Wilderness Area and the Mingo National Wildlife Refuge.

The haze plans' focus is on visibility, but proponents have argued that it also will benefit people who have respiratory illnesses.

The state had no plan to comply with the law until 2009, when the Arkansas Department of Environmental Quality drafted a state implementation plan. That plan was later rejected in part by the EPA.

In March, the EPA settled with the Sierra Club, which had sued the agency in 2014 in an effort to produce a new plan that would comply with the law.

On Friday, Balanced Energy Arkansas, a coalition of companies and organizations promoting "clean coal," filed a motion to intervene in the case, joining Nucor-Yamato Steel.

Attorneys for the group cited a five-year progress report submitted to the EPA in regards to the haze rule that constitutes a revision to the state's implementation plan from 2009.

"Based on information and belief, BEA asserts that the State of Arkansas is preparing a supplement to the RHR [Regional Haze Rule] SIP [state implementation plan] for submission to the EPA," attorneys for the group wrote Friday. The filing goes on to say that the Sierra Club is not entitled to relief in the case.

The five-year progress report is required by law, EPA spokesman Jennah Durant said Tuesday.

While it would constitute a revision of the state implementation plan, it would not alter the plan in a way that would get it into compliance with the federal rule, Durant said.

In May, attorneys for Nucor-Yamato Steel, which owns a plant in northeast Arkansas, argued that the costs associated with retrofitting the power plants would raise electricity prices and negatively affect the company as a large electricity consumer.

Attorneys for the company also accused the EPA and Sierra Club of improperly colluding to settle the case, saying that both organizations stood to benefit from settling the case.

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Attorneys for the Sierra Club argued that Nucor-Yamato Steel's rights were not being impaired and that its intervention was "untimely" because the federal implementation plan had already been issued.

A judge has not ruled yet on whether Nucor-Yamato Steel or Balanced Energy Arkansas may intervene in the case.

The federal implementation plan produced by the EPA in March suggested that reductions would be achieved through retrofitting 11 units at seven power plants in the state.

Entergy Arkansas and the Arkansas Electric Cooperative Corp. own 65 percent and 35 percent of the two largest coal plants in the state, the Independence plant in Newark and the White Bluff plant in Redfield, both producing 1,700 megawatts of electricity.

Those plants, the two largest electricity generators in the state, have each operated for more than 30 years without emissions-controlling scrubbers. They are the only two coal plants in the state without them.

The state implementation plan was largely similar to the federal plan, except for the inclusion of the Independence plant, which isn't required by law to be included until 2018.

Metro on 06/10/2015

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Oklahoma Corporation Commission judge says no to replacing OG&E's Mustang plant in \$1.1 billion compliance case

by Paul Monies ([/more/Paul Monies](#)) (<https://plus.google.com/100998321323581507732?rel=author>) Modified: June 8, 2015 at 10:23 pm • Published: June 9, 2015

Oklahoma Gas and Electric Co. should be able to recover some costs related to environmental compliance, but should not get pre-approval to spend \$400 million to replace its aging Mustang generating plant, an administrative law judge recommended Monday.



Steam rises from the OG&E Mustang power plant. An administrative law judge ruled Monday that OG&E should not get pre-approval of renovations to the plant. The Oklahoman Archives **Steve Gooch - The Oklahoman**

Corporation Commission Administrative Law Judge Ben Jackson said the utility also should explore adding wind energy, echoing a request by nearly all the parties in OG&E's complex and lengthy case for environmental compliance and replacement generation.

In his 30-page report, Jackson recommended against any increase in rates at this time. But he said OG&E should be allowed to recover environmental costs already expended or under contract.

Jackson said the utility should file for environmental next rate case, which is expected to be filed next month.

Jackson presided over a month-long hearing in which 13 parties intervened in the case, ranging from the Oklahoma Industrial Energy Consumers Association to the Oklahoma Corporation Commission.

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If approved in full, OG&E's \$1.1 billion plan would increase residential customer bills 15 percent by 2019. Large industrial customers could see increases of almost 20 percent.

Jackson's recommendation goes to the three-person Corporation Commission for a final vote. In the meantime, any party in the case not happy with his recommendations can apply to have a hearing on their complaints — called exceptions — before the commission.

OG&E said it had "mixed reactions" to the report. The utility said it planned to file exceptions to some of the judge's recommendations.

"We're pleased that the ALJ (administrative law judge) agreed with so many of our positions," Paul Renfrow, the company's vice president of public affairs and corporate administration, said in a news release. "However, we are disappointed with the judge's failure to allow for the recovery of costs through a rider for federally mandated environmental equipment that is already, or soon to be, in service. This simply kicks the can down the road."

Plan details

OG&E sought to recover more than \$700 million from its customers for its plan to comply with federal Regional Haze and Mercury and Air Toxics Standards. Separate from environmental compliance, the request included more than \$400 million to replace its Mustang plant with quick-firing, natural-gas powered combustion turbines.

OG&E expressed "extreme disappointment" on Monday with the judge's recommendation to drop pre-approval of the Mustang plant replacement.

"We believe we presented a compelling case demonstrating the need for replacing the aging Mustang plant," Renfrow said. "The time pressures and need for generation do not go away."

Just one party, the OG&E Shareholders Association, backed the utility's plan to replace the Mustang plant. Others argued the company hadn't fully explored alternatives for the generating plant, which has natural-gas fired units dating to the 1950s.

The Oklahoma attorney general's office, which represents consumers in utility cases before the commission, was a late addition to the parties opposing the Mustang plan. The office filed its objections in March during the hearing.

'The right call'

Attorney General Scott Pruitt on Monday said the administrative law judge's recommendation to deny the Mustang portion of the case "is the right call."

Pruitt joined OG&E and Oklahoma Industrial Energy Consumers in fighting a federal plan for Regional Haze. The legal challenge made it all the way to the U.S. Supreme Court, which declined to take up the case last year.

Region Haze rules

"It is unfortunate that Oklahoma consumers and industry are facing significant increases in utility costs due to the implementation of the environmental compliance plan stemming from the EPA's costly Regional Haze mandate," Pruitt said in a statement. "As this case moves forward, my office will continue its role as consumer advocate to ensure any increases in utility costs are implemented with the least possible impact on the consumer while considering reliability, safety and security."

possible impact on the customer while considering reliability, safety, and security.

OG&E faces several deadlines in the next five years to comply with the rules under the Clean Air Act. The regulations affect almost two-thirds of the utility's fossil-fueled generating fleet.

OG&E said it expected to spend more than \$700 million to install scrubbers at two coal units at the Sooner plant near Red Rock and to convert two coal units to natural gas at its Muskogee plant. The environmental plan also included other upgrades to emissions controls at those two coal plants and its Seminole natural gas plant.

The utility has already begun installing new burner technology to lower nitrogen oxides emissions under part of the Regional Haze rules. It also has finalized contracts to install activated carbon injection systems on all five of its coal units to meet April 2016 deadlines for Mercury and Air Toxics Standards.

Jackson's recommendation was unclear on when OG&E might be able to start charging customers for the money it has already spent or is under contract to spend for environmental compliance. Estimates for those environmental upgrades total \$125 million.

Reaction from intervening parties

Some of the parties involved in case were still studying the report Monday. Attorney Bill Humes, who represented The Wind Coalition, the Oklahoma Hospital Association and Oklahoma Cogeneration LLC, said at first glance the administrative law judge agreed with many of the recommendations of his clients.

"To disallow Mustang and to require more investigation into wind is exactly what our clients were looking for," Humes said. "Everyone is sympathetic to OG&E's need to comply with the EPA rules, but it has to be reasonable and the lowest cost. OGE's plan was neither. It was a great plan for shareholders, but not for customers."

Former Corporation Commissioner Jim Roth, who represented The Wind Coalition along with Humes, said he was glad the judge recommended additional wind power as a condition of the environmental compliance.

"It appears the judge's recommendation takes to heart the unanimous request of all customer class parties that OG&E should be required to add low-cost, clean wind energy before any costs for extending their older coal plants should be considered."

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3 pumps down as wastewater plant fights floodwater

Barbara Featherston, Director of Water and Sewage for Shreveport updates us on Shreveport's North Regional Wastewater Plant.

[Alexandria Burris](mailto:alexandria.burris@shreveporttimes.com), alexandria.burris@shreveporttimes.com 9:54 a.m. CDT June 10, 2015

The plant normally takes in 3 million gallons of wastewater per day but now is taking in at least an estimated 60 million gallons of flow a day.



Flooding has inundated Shreveport's sewer system, causing the North Regional Wastewater Treatment Plant, just off Russell Road, to work overtime.

The plant normally takes in 3 million gallons of wastewater per day but now is taking in at least an estimated 60 million gallons of flow a day.

"We're not set up to pump that. We're not set up to treat that," said Barbara Featherston, Shreveport's water and sewage director.

Featherston said about 95 percent of what's coming into the plant is Red River water. The remaining five percent is sewerage, she said.

Everything around the plant — including manhole covers elevated 10 feet high to account for flood conditions — is underwater, she said. On the site, water covers the parking lot.

The plant is like an island sitting in a bowl.



[SHREVEPORTTIMES.COM](http://www.shreveporttimes.com)

[Helicopter delivering pumps to wastewater plant](http://www.shreveporttimes.com/story/news/2015/06/07/helicopter-delivering-pumps-to-wastewater-plant/28644923/)

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The treatment plant has six influent pumps that take water into the plant. But three of the six are down, Featherston said.

Two were moved down prior to the flood, she said. A contractor couldn't fix the pumps because of the flood. The third pump stopped working a couple of nights ago.

There are pumps on standby, and the Louisiana Army National Guard helped helicopter in two pumps to supplement and provide relief to existing equipment which has been working 24/7. Featherston said they are keeping up with what they have.

Despite water overwhelming the plant, Shreveport still is required to meet all the deadlines of its federal consent decree to rehab its aged and deteriorated sewer system and reduce sanitary sewer overflows that expose residents and the environment to bacteria and disease.

"In this kind of flooding and severe storm system situations, it's not uncommon to see sewer overflows," said Jennah Durant, a U.S. Environmental Protection Agency Region 6 spokeswoman.

Durant said large volumes of water can overwhelm and damage portions of the wastewater treatment plant. Overflows are of great concerns in densely populated areas where more people can come in contact with bacteria, she said.

The recent flood event does not change the federal government's demands, Durant said. Shreveport will have to detect and report any overflows that occur as result of the flooding.

Mike Steele, the Governor's Office of Homeland Security and Emergency Preparedness spokesman, also said water quality testing would be done on a case by case basis if Louisiana Department of Environmental Quality inspectors discover untreated wastewater areas of concern after the river recedes.

For now, the greatest concerns are the volume of water entering into the treatment plant and trying to maintain that plant so it's still operational when the water recedes, Featherston said.

"What is potentially going out into the water is a such a small amount of anything but still our system is inundated. We don't have overflows. We don't have anything flowing out of our system. Everything is coming into our system but that's worse for us," she said.

The North Regional Wastewater Treatment Plant is in an area designated as phase two in the city's consent decree, a mandate from the federal government to fix Shreveport sewers. Investigation phase started there prior to the weather event, she said. Some of those operations have shifted to other areas in phase two.

The city's been in contact with the EPA and DEQ, Featherston said.

"We will let EPA know we need for this to go down for us to finish this work," Featherston said. She still anticipates the city will meet its federal deadlines.

In Bossier City, Jeffery Anderson, director of public utilities, said the city began seeing increases Thursday in the volume of flow from the main line leading to its treatment plant off Barksdale Boulevard.

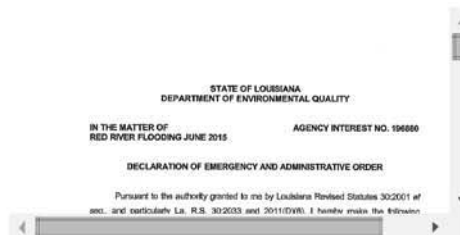
"We peaked out at what would be the equivalent of 30 million gallons per day of flow the other night," Anderson said. The plant normally takes in 6-10 million gallons per day on average, he said. It's taking in about 9-10 million gallons per day now.

To hedge off sanitary sewer overflows, Anderson said his department concentrated its efforts were centered upstream of the plant to prevent the main influent sewer line feeding the plant from filling up with river water. Added flow entered the line near the war veterans home on the Arthur Ray Teague Parkway.



Jeffery Anderson, Director of the Public Utilities for the City of Bossier gives an update on the Bossier Wastewater Treatment plant.

"Because if that line became flooded by the river, it would have been filled up with river water. There would have been no room in that line for sewer water, so that water would have been basically ran out on the ground in other locations in town," he said.



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Barnett Shale

JUNE 9, 2015

Railroad Commission picks Porter as new leader

BY MAX B. BAKER

mabaker@star-telegram.com

Texas Railroad Commissioner David Porter was unanimously selected Tuesday to be the new chairman of the state's oil and gas regulatory agency.

Porter, a CPA who practiced in Midland, providing services to oil and gas producers, royalty owners and oil field service companies, takes over the post from outgoing Chairwoman Christi Craddick.

"As Railroad Commissioners, it is our job to make sure industry produces efficiently and economically, and does so in the safest, most responsible manner possible," Porter said in a statement. "We meet our responsibilities at the commission — we've been doing it for over a century — and I am honored to serve as chairman during this important time for our state."

Porter, who nominated Craddick for the chairmanship in August, praised her for leading the agency through the recently completed legislative session. When he recommended her for the top spot, he said Craddick's experience in working with lawmakers would be invaluable.

"I also want to thank Chairman Craddick for her leadership. This Legislative Session was a success for the commission, and her leadership at the Capitol helped secure the funding we need," Porter said.

Craddick said she was pleased to turn the responsibilities over to Porter. Craddick, the daughter of former Texas House Speaker Tom Craddick, is an attorney specializing in oil and gas, water, tax issues, electric deregulation and environmental policy.

"After working alongside him for the past 21 1/2 years, I know his knowledge, steady approach, and dedication to the agency will guide his leadership and keep the commission on a path toward an even stronger future," she said.

Commissioner Ryan Sitton, who was elected in November, said he looks forward to working with Porter, who brings a "thoughtful approach" to the job.

Being chairman is largely ceremonial. While the chairman presides over the agency's meetings, each commissioner acts independently and pushes his or her own agenda. There is no set timetable for selecting a chairman or chairwoman; it can be changed at any time.

Porter was elected in 2010. Immediately after taking office, he created the Eagle Ford Shale Task Force to establish a forum to discuss drilling issues in the South Texas oil and natural gas field. Porter has also advocated using natural gas as a fuel for automobiles.

While in office, Porter has been a frequent critic of the federal government. And on Tuesday, he said "our state and its regulatory framework are under attack from Washington, D.C.," particularly from environmental regulations and President Barack Obama's "war on fossil fuels."

On Monday, he sent a letter urging the Texas congressional delegation to redouble its efforts to eliminate the export ban on crude oil.

Last year, during the campaign to ban hydraulic fracturing in Denton, Porter sent a letter to Secretary of State John Kerry asking him to close a "sanction loophole" that allowed Gazprombank to lobby Congress. Porter and others felt that the Russians were secretly campaigning against the shale oil boom in Texas to boost its global market share.

The Railroad Commission will face challenges. While the price of oil and gas has caused the number of rigs to drop, the agency will be scrutinized for how it deals with earthquakes and their reported link to drilling.

Gov. Greg Abbott also signed into law House Bill 40, which reasserted the agency's control over urban drilling.

Environmentalism Jim Schermbeck doesn't expect to see a lot of change at the commission.

"Tweedledum. Tweedledee," Schermbeck said. "As long as they are getting campaign cash from the industry they are supposed to be regulating, they won't be regulating it very well."

Max B. Baker, 817-390-7714

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Good news about fracking prompts hysteria from environmentalists

They say exhaustive EPA study is ‘incomplete’

by The Oklahoman Editorial Board ([/more/in-house](#)) ([?rel=author](#)) Published: June 10, 2015

IT’S telling that the extremism of the environmental movement has reached the point that some of its members now insist the Obama administration is engaged in a grand conspiracy with Big Oil.

Why are those environmentalists connecting dots that don’t line up (or even exist)? Because the federal Environmental Protection Agency’s initial draft of a four-year study of hydraulic fracturing concluded that fracking doesn’t have “widespread, systemic impacts on drinking water.”

The study released last week noted that between 25,000 and 30,000 new wells were drilled and hydraulically fractured annually in the United States between 2011 and 2014, yet ground water contamination occurred in only a relative handful of instances. And even those instances of contamination were mostly tied to accidents or peripheral activities, not the actual process of hydraulic fracturing.

Environmental groups responded by criticizing the report “for being incomplete and heavily influenced by the energy industry,” *The Oklahoman’s* Chris Casteel reported.

Incomplete? The study took four years and included more than 950 sources of information, including published papers, numerous technical reports, information from stakeholders and peer-reviewed EPA scientific reports.

Given the mountain of evidence involved, one has to wonder just how much it will take before this sort of behavior involving accusations of conspiracy theory to explain away untethered from reason. Thus, some have resorted to conspiracy theories to explain away

Wenonah Hauter, executive director of Food & Water Watch, claims the EPA study had “The fate of our precious water resources should not be decided by an industry-driven desire to drill and frack many thousands of new wells across the country each year,” Hauter said.

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Published on *The National Law Review* (<http://www.natlawreview.com>)

The Practical Bottom Line: The Final Waters of the US Rule

Article By:

Lowell M. Rothschild

Two weeks ago, we started our series of posts examining the *Obama Administration*'s final rule redefining the waters subject to federal jurisdiction under the *Clean Water Act* by looking at the bottom line, legally, of the waters now considered to be always jurisdictional. We then examined the waters that will probably be (and may be) jurisdictional, as well as a few of the ambiguities remaining in the final rule and some that were resolved by the agencies before finalization. Following [two posts](#) on changes we believe the Administration should have made but didn't and one examining the practical reality of proving jurisdiction under the significant nexus test, today's post is our last, and we'll finish 180 degrees from our first one. That post looked at the legal bottom line; today we give you our view of the practical one.

Practically speaking:

- The range of automatically-jurisdictional waters is quite broad: waters are jurisdictional starting at interstate waters and waters useable for commerce (including the territorial seas), as far up their tributaries as there is an ordinary high water mark and a bed and bank and outward from that ordinary high water mark at least 100 feet (and up to 1,500 feet if in the FEMA 100-year floodplain). In addition, waters within 1,500 feet of a high tide line or the ordinary high water mark of a Great Lake are always jurisdictional.
- Added to this is the range of waters very likely to be jurisdictional:
 - Prairie potholes, located in the upper Midwest,
 - Carolina bays and Delmarva bays, that occur along the Atlantic coastal plain,
 - Pocosins, found predominantly along the Central Atlantic coastal plain,
 - Western vernal pools, located in parts of California, and
 - Texas coastal prairie wetlands, located along the Texas (and possibly western Louisiana) Gulf Coast.
- Then, there are all the waters that might be jurisdictional after application of the significant nexus test: all "similarly situated" waters located within:
 - 4,000 feet of the high tide line or ordinary high water mark of any other jurisdictional water (including dry tributaries).

- The 100-year floodplain of a traditionally navigable or interstate water or the territorial seas.
- This latter test must be applied on a case-by-case basis, which can be burdensome to do, particularly for large projects, requiring, at a minimum:
 - Identification of the nearest traditionally navigable or interstate water or territorial sea.
 - Identification of other potentially similarly situated waters, most of which will not be on the applicant's property, and so probably require identification using aerial photos.
 - Determination of the size and function of these photographically-identified, similarly-situated waters (and confirmation they are actually similarly situated), possibly through obtaining access rights to the property of neighbors in the region.
 - Hiring a contractor to prepare a report summarizing all of the above, possibly with the assistance of an attorney, given the complexity of the rule being applied

(and this burden falls on the regulated entity, not the agencies)

- The process of identifying nonjurisdictional waters will still require:
 - Negotiating with the Corps and then with EPA about the scope of waters not subject to jurisdiction (a process which culminates in the issuance of a jurisdictional determination, which the agencies argue is not reviewable in court).
 - The possible defense of this determination from third-party challenges by project opponents.
- We believe that there not is a great likelihood that going through this process will result in the Agencies identifying the waters at issue – those within the 4,000-foot zone – as nonjurisdictional. While the actual probability will be seen over time as the Agencies make such decisions, a good yardstick is the Agencies' view of the significance of the 100-year floodplain to making a "significant nexus" determination:

Recall that there are two zones in which the Agencies have determined – based on their significant nexus – that waters outside of a tributary's ordinary high water mark **are always jurisdictional**. These zones are (1) 100 feet regardless of floodplain and (2) up to 1,500 feet if within the 100-year floodplain. The difference between these two zones is obviously that the latter is up to 15 times as far away but connected to the tributary by floodwaters approximately once every 100 years. Put another way, the Agencies believe that a one percent chance of a floodplain connection in any given year is sufficient for a water to have a "significant nexus" despite the fact that the water is up to 15 times farther away than other "always-jurisdictional" waters. This is a very expansive view of what connections create a significant nexus and, if any guide to the Agencies' application of the significant nexus test, means that the Agencies will determine that most waters have such a nexus.

Thus, given the time and expense of the process, the risk of litigation challenges and the relatively limited scope of waters likely to be excluded from jurisdiction, we believe many applicants will choose not go through the process, instead conceding jurisdiction and moving forward with permitting all wetlands and waters on their property, jurisdictional or not.

This will result in fewer applicants able to obtain nationwide permits (which require much less process and

processing to obtain) and more applicants requiring individual permits. With every individual permit comes the need for the Corps to consult with the US Fish and Wildlife Service under the Endangered Species Act and comply with the National Environmental Policy Act. All of which takes time and money for the applicant and resources from the Corps. Without additional funding and personnel (which are very unlikely to come), the permitting process will take longer (and draw resources away from enforcement, which is another blog for another day.)

So the practical reality is that the final rule brings us close to the pre-*SWANCC* days, when almost all waters were subject to federal jurisdiction. It's a very broad interpretation of the Clean Water Act, perhaps not actually supported by the Act or consistent with a decade of Supreme Court precedent. It brings more cost and delay to the process. But, for the regulated community, at least it's predictable.

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Everything New Orleans

Drilling rig may come to St. Tammany Parish in 45 days

Log Cabin Road.jpg

The private Log Cabin Road off Louisiana 1088 near Mandeville. The road leads to a location where Helis Oil & Gas Co. wants to drill for oil. (*Robert Rhoden NOLA.com | The Times-Picayune*)

Robert Rhoden, NOLA.com | The Times-Picayune By **Robert Rhoden, NOLA.com | The Times-Picayune**

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on June 09, 2015 at 1:39 PM, updated June 09, 2015 at 2:50 PM

With its final regulatory hurdle behind it, Helis Oil & Gas Co. plans to waste no time starting work on its drilling and **fracking** project in St. Tammany Parish. A drilling rig may be erected in about 45 days on the site northeast of Mandeville, a company spokesman said Tuesday (June 9).

Helis' controversial project cleared its final regulatory step Monday when the Army Corps of Engineers announced it had issued a wetlands permit for the first phase of the venture. The company's initial approvals, including a **state drilling permit**, allow for a 13,374-foot exploratory well, but no oil and gas production.

While the project is being challenged in court by St. Tammany Parish government and a citizens group, Helis plans to begin site preparations right away, spokesman Greg Beuerman said.

"We're moving forward."

In the next 30 to 45 days, contractors will begin work to improve the private Log Cabin Road, which runs off of Louisiana 1088 across from Lakeshore High School and leads to the drill site, Beuerman said. The preparatory site work also includes improving the well pad area where the drilling rig will be set up, and putting up a security gate system at the entrance to Log Cabin Road.

When that work is concluded, the company will immediately move a drilling rig onto the property. Crews will drill a vertical, exploratory well and then remove the rig, a process that will taken another 30 to 45 days, he said.

Dan Swenson,
NOLA.com |
The Times-
Picayune

Helis will then pore over the well data to determine whether their hole is a potential moneymaker. "The results will be analyzed and the company will make a decision whether anything is commercially viable several months down the road," Beuerman said.

If the company likes what it sees, it would then seek permits to continue drilling horizontally and use the hydraulic fracturing method to crack a shale formation and free up oil for extraction.

Starting this week and continuing into next week, workers will erect air and noise monitoring equipment at Lakeshore High and at a site along Interstate 12, Beuerman said. "We'll be monitoring all along throughout the process."

Baffles will be erected at the drill site to muffle the sound and ensure that noise is not a problem, he said.

Water sampling from seven to 10 landowners in the surrounding area have been completed and sent to a lab for analysis so a quality baseline can be established, according to Beuerman. Results will be made available to the public and parish government, he said.

It is unclear whether St. Tammany Parish government or Concerned Citizens of St. Tammany, which are challenging the project in court, will seek a temporary restraining order to put the project on hold while the case is under appeal. A parish government spokesman has declined comment, citing the ongoing litigation.

Rick Franzo, president of the citizens group, said it would consider such a move.

Parish Councilman Jake Groby, one of the parish governing body's most vocal opponents of drilling and fracking, said Monday evening the corps did "a disservice" to St. Tammany by awarding the wetlands permit.

Many citizens oppose the project due to concerns about air, soil and water pollution and damage to the aquifer that supplies St. Tammany's drinking water.

In an effort to block Helis, the parish government filed a lawsuit last year against the state Department of Natural Resources' and its Office of Conservation. The parish has argued that its zoning regulations prohibit drilling at the site, but a state judge ruled the local rules cannot trump state law when it comes to oil and gas exploration.

Parish government and Concerned Citizens, which was made a party to the parish lawsuit, are appealing the ruling.

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Feds blame 2014 Houston Ship Channel collision, spill on tugboat

Posted on June 10, 2015 | By Associated Press

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Houston Ship Channel

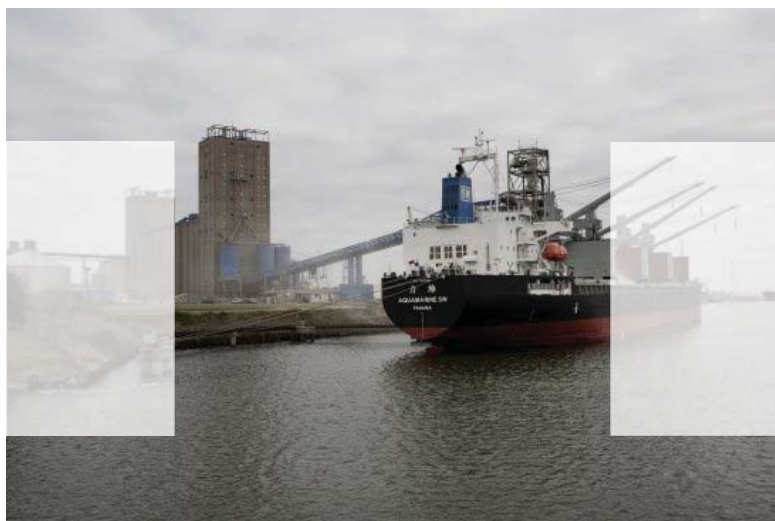


IMAGE 1 OUT OF 15

Scott Dalton / Bloomberg

A ship sits docked along the Houston Ship Channel in Houston, Texas, U.S., on Thursday, Jan. 30, 2014. As record oil and gas output floods the country with cheap and abundant energy and brings the U.S. closer to energy independence, the bulk of the fuels get squeezed through Houston, the country's largest export gateway and the core of its biggest refining region.

GALVESTON, Texas (AP) — A tugboat captain's decision to try to beat a cargo ship into the Houston Ship Channel is the probable cause of a 2014 collision that spilled 168,000 gallons of oil that drifted up to 200 miles down the Texas Gulf coast, according to a federal report issued Tuesday.

The National Transportation Safety Board also said in its report that the failure of a ship channel navigator and the Summer Wind master to set a safe speed in the fog-shrouded channel contributed to the accident. The NTSB also cited the failure of the tugboat captain and navigator to establish early radio communication.

No crew members were injured in the March 22, 2014, collision between a fuel oil barge towed by the tugboat Miss Susan and the cargo ship Summer Wind in the channel of lower Galveston Bay.

The Miss Susan was towing two 300-foot-long tank barges filled with 924,000 gallons of fuel oil when the collision occurred. It was sailing eastward across the mouth of the channel bound for Port Bolivar, across from Galveston. Meanwhile, the 607-foot-long Summer Wind was steaming north into the channel when the string of oil barges crossed its path.

Also contributing to the accident, the NTSB concluded, was the failure of the U.S. Coast Guard's Vessel Traffic Service to alert the ships to the developing collision risk and the lack of a Coast Guard vessel separation policy for the area of the collision.

A message left with Kirby Inland Marine, operators of the Miss Susan, seeking comment was not

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Jun 9, 4:54 PM EDT

HOUSE REPUBLICANS WOULD CUT EPA SPENDING 9 PERCENT

BY KEVIN FREKING
ASSOCIATED PRESS

WASHINGTON (AP) -- House Republicans proposed a spending bill Tuesday that cuts the budget at the Environmental Protection Agency by 9 percent and tries to prevent the Obama administration from enacting several regulations.

At the top of their regulatory hit list is a proposed rule on cutting carbon dioxide emissions from coal plants.

The bill made public Tuesday by the House Appropriations Committee would reduce the EPA workforce to



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15,000 people, the same level as in 1989. The agency had more than 17,300 employees five years ago and has gradually lost employees since.

The bill covers the Interior Department, the Smithsonian and other agencies, and it calls for spending \$30.2 billion. That's \$246 million below last year's levels and \$3 billion below President Barack Obama's request.

Another key regulation Republicans seek to squelch involves the EPA's efforts to better protect small streams and tributaries. The GOP has heard from constituents and industry groups that the additional regulation would make it harder for businesses and farmers to operate.

In explaining the proposed spending cuts for EPA, a press release from the committee said "These reductions will help the agency streamline operations, and focus its activities on core duties, rather than unnecessary regulatory expansion."

Stymied by Congress on nearly every front, Obama has turned to actions he can take on his own, often through the rulemaking process. But the GOP is intent on opposing many of those efforts, too. Lawmakers do so through spending bills that explicitly forbid an agency from spending money for specific tasks, such as drafting or enacting new regulations.

The environmental advocacy group Friends of the Earth described the House bill as "draconian."

"Using funding levels as their weapon of choice, the House Republican Leadership is launching a frontal assault against our bedrock environmental protections," said Lukas Ross, a climate policy analyst for the group.

A House subcommittee is expected to vote on the bill Wednesday. Rep. Ken Calvert, R-Calif., and the subcommittee chairman, lauded the bill as making



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difficult decisions under a tight budget. "In addition, the bill takes meaningful steps to shield our economy and defend American jobs from the executive overreach of EPA regulators," Calvert said.



In other areas of the bill, GOP lawmakers seek to continue a one-year delay on any further rulemaking through the Endangered Species Act that could lead to greater protections for the greater sage-grouse. The oil and gas industry has said that potential restrictions designed to protect the bird could lead to thousands of lost jobs. The bill also blocks an administration proposal to increase grazing fees on federal land.

While much of the bill's focus is on blocking new regulations, one section mandates that the Department of Interior re-issue rules that lifted federal protections for gray wolves in Michigan, Wisconsin, Minnesota and Wyoming.

Federal judges overturned the Interior Department's efforts to delist the gray wolf in two separate cases. But the GOP's bill would require the Interior secretary to repeat the process.

The committee would also provide no funding for the Eisenhower Memorial Commission in Washington, D.C. and requires that all construction funds be appropriated before construction begins. In recent years, the effort to build the memorial has stalled amid objections to the design from Eisenhower's family.

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